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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,100	06/02/2005	Tomohiro Akiyama	0054-0294PUS1	1254
2292 7590 01/02/2009 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER LI, SHI K				
ART UNIT 2613		PAPER NUMBER		
NOTIFICATION DATE 01/02/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/537,100

Applicant(s)

AKIYAMA ET AL.

Examiner

Shi K. Li

Art Unit

2613

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) 3-6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/IS/C)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date 6/2/05, 8/10/07.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Species I in the reply filed on 10 November 2008 is acknowledged. The traversal is on the ground(s) that the examiner has failed to show that the number of common features and the overall design and functionality of the several embodiments are insufficient for linking them together as alternative embodiments of one inventive concept within the meaning of PCT Rule 13.1. This is not found persuasive because the species lack the same or corresponding special technical features for the following reasons: The common features of the Species such as the uses of multiple light sources, spatial optical modulator, optical synthesizer and beam synthesizer are taught by Kobayashi et al. (Japan Patent Application Pub. JP406276017 provided in IDS filed 2 June 2005).

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 depends on claim 1. While claim 1 recites "a spatial optical modulator for phase-modulating" signal light beams, claim 2 recites the limitation "wherein the spatial optical modulator intensity-modulates the ... instead of phase-modulating the ..." in lines 2-6 of the

claim. In other words, the spatial optical modulator of claim 2 is not phase-modulating signal light beams and, therefore, is not a proper dependent claim 1.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi et al. (Japan Patent Application Pub. JP406276017) in view of Riza (U.S. Patent 5,187,487).

Regarding claim 1, Kobayashi et al. discloses in FIG. 3 an antenna feeding circuit. FIG. 3 comprises first optical demultiplexer 44₁₁, second optical demultiplexer 44₁₃, first optical frequency converter (frequency shifter) 491, second optical frequency converter 493, optical multiplexer 13, optical synthesizer 31, beam synthesizer 44 and a plurality of optoelectronic converters 53. The difference between Kobayashi et al. and the claimed invention is that Kobayashi et al. does not teach a spatial optical modulator. Riza teaches in FIG. 2 an apparatus for driving an antenna array. Riza teaches in FIG. 2 device 144 for controlling the beam width and spatial light modulator (SLM) 170 for adjusting the phase of the beams before the beams are superimposed with a reference beam. Kobayashi et al. also teaches a similar approach by adjusting the reference beams which has equivalent effect of adjusting the frequency shifted beams. One of ordinary skill in the art would have been motivated to combine the teaching of Riza with the antenna feeding circuit of Kobayashi et al. because the pixel array of the SLM corresponds to the antenna array so that a separate selectively phase delayed signal light beam is

generated for each antenna element in the antenna array to be individually controlled. Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a SLM for adjusting the phase of light beams, as taught by Riza, in the antenna feeding circuit of Kobayashi et al. because the pixel array of the SLM corresponds to the antenna array so that a separate selectively phase delayed signal light beam is generated for each antenna element in the antenna array to be individually controlled.

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi et al. and Riza as applied to claim 1 above, and further in view of Izadpanah et al. (U.S. Patent 7,020,396 B2) and Hong et al. (U.S. Patent 4,965,603).

Kobayashi et al. and Riza have been discussed above in regard to claim 1. Furthermore, Kobayashi et al. teaches in FIG. 3 Fourier transform lens 46 and optical transmission lines 48. It is well known in the art that fiber is a popular transmission line for optical signal. The difference between Kobayashi et al. and Riza and the claimed invention is that Kobayashi et al. and Riza teach phase modulation instead of intensity modulation. Izadpanah et al. teaches in FIG. 2 an optic-electronic ultra-wideband radio waveform generator. Izadpanah et al. teaches in FIG. 2 SLM 204 for modulating at least one of phase and amplitude. That is, Izadpanah et al. considers phase modulation and amplitude modulation provides equivalent function. Each of them may have minor difference from the other and more desirable for particular applications. Hong et al. provides another example of using amplitude modulation. Where the claimed differences involve the substitution of interchangeable or replaceable equivalents and the reason for the selection of one equivalent for another was not to solve an existent problem, such substitution has been judicially determined to have been obvious. See *In re Ruff*, 118, USPQ 343 (CCPA 1958).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to replace phase modulation with intensity modulation.

Since Kobayashi et al. teaches Fourier transform lens 46 along the reference beams, the Examiner cites Hong et al. to teach that the Fourier transform lens can be placed along the modulated beam. Hong et al. teaches in FIG. 1 an antenna feeder comprising SLM 24 and Fourier transform lens 26. The references, considered as a whole, suggest that the SLM and Fourier transform lens can be placed along the reference beams or the modulated beams and provide equivalent effects. Choosing of one over the other is an engineering choice that is obvious to one of ordinary skill in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to place a Fourier transform lens along the modulated beams.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shi K. Li whose telephone number is 571 272-3031. The examiner can normally be reached on Monday-Friday (7:30 a.m. - 4:30 p.m.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan can be reached on 571 272-3022. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2613

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

skl

23 December 2008

/Shi K. Li/

Primary Examiner, Art Unit 2613